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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,673	08/25/2003	Thomas R. Briscoe	03-5269/CIP	5238

7590 05/19/2005  
Edward M. Livingston, P.A.  
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EXAMINER

PUROL, DAVID M

ART UNIT PAPER NUMBER

3634

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/647,673	Applicant(s) BRISCOE ET AL.	
	Examiner David M Purol	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
     4a) Of the above claim(s) 10 and 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*[Handwritten mark]*

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1. Applicant's election of Species I in the reply filed on March 8, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 10,21-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

2. Claims 1-9,11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for the following:

Claim 1, line 6 "said spacer";

Claim 1, line 25 "inter-structural attachments";

Claim 14, lines 9-10 "inter-structural attachments";

Claim 19, line 3 "the hold down tabs".

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1,2,4,9,11,13,14 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Foster et al. Foster et al disclose a pressure vent hurricane shutter comprising a shutter framework encompassing slat support guides and cover 16a,b; 18a,b; 20a,b; 12, 14, slanted slats 22, shutter hinge 42.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,5,6,12,15,16,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al. Regarding the type of material used, it is a well settled issue that the selection of a known material based upon its suitability for the intended use would have been obvious to one of ordinary skill in the art. With respect to the dimensions of the shutter, inasmuch as there is nothing to indicate that the recited dimensions are significant or are anything more than one of numerous configurations a person of ordinary skill in the art would have found obvious for the purpose of controlling the strength characteristics of the shutter no patentable weight has been attributed thereto.

5. Claims 7,17,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al in view of Sipos et al. While Foster et al do not disclose the use of hold down tabs, Sipos et al disclose a hurricane shutter comprising hold down tabs 60, wherein, to incorporate this teaching into the hurricane shutter of Foster et al for their


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explicit purpose of maintaining the shutter in a predetermined position would have been obvious to one of ordinary skill in the art.

6. Claims 8,18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sassano, Iacovoni, Economou, Milam et al, Ney, Poma et al, Schoen, Berg, Ensminger.

8. Any inquiry concerning this communication should be directed to David M Purol at telephone number (571) 272-6833.

  
David M. Purol  
**Primary Examiner**  
**Art Unit 3634**